

# Notice of Allowability

Application No.

09/171,432

Applicant(s)

FIELDS ET AL.

Examiner

Zachariah Lucas

Art Unit

1648

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the Response of June 29, 2004.
2. ☒ The allowed claim(s) is/are 74,75 and 83-89.
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).
  - \* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date 4/30/04
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☒ Interview Summary (PTO-413),  
Paper No./Mail Date 8-12-2004
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

## **DETAILED ACTION**

### ***Status of the Claims***

1. Claims 69, 73-76, and 79-89 are pending in the present application. In the prior action, claims 83-89 were indicated to read on allowable subject matter; claims 69, 74-76, and 79-82 were withdrawn, and claims 70, 77, and 78 were rejected.
2. In the Response filed on June 29, 2004, the Applicant cancelled claims 70, 77, and 78, and amended claims 83-89. Claims 83-89 are allowed.
3. In the below Examiner's Amendment, claims 69, 73, 76, and 79-82 were cancelled from the application prior to rejoinder of the method claims. Claims 74 and 75, as amended below, were rejoined with the allowed products, and the restriction requirement between these claims (methods of using the claimed peptides for the detection of anti-hepatitis A virus antibodies) and the allowed products is withdrawn.

## **EXAMINER'S AMENDMENT**

4. An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with Bruce H. Becker on August 12, 2004.

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The application has been amended as follows:

Claims 69, 73, 76, and 79-82 have been cancelled from the application.

Claim 74 has been amended to read as follows:

74. A method of detecting the presence of antibodies against hepatitis A virus (HAV) in mammalian serum, said method comprising:

(a) contacting one or more isolated, immunogenic HAV peptides with antibodies from mammalian serum, wherein the immunogenic peptides are selected from the group consisting of SEQ ID NOS: 42-48, and

(b) detecting the formation of complexes between the immunogenic peptides and the antibodies.

Claim 75 has been amended to read as follows:

75. The method of Claim 74, wherein the immunogenic peptide is SEQ ID NO: 47.

These amendments were made to limit the claims to methods of using the allowed products (i.e. methods requiring the use of at least one of the peptides of claims 83-89), and to correct minor informalities in the claims.

#### ***Information Disclosure Statement***

5. The information disclosure statement (IDS) submitted on April 30, 2004 is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement has been considered by the examiner.

#### ***Claim Objections***

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6. **(Prior Objections-Withdrawn)** Claim 70, 77, and 83-89 were objected to on various grounds in the prior action. In view of the amendment or cancellation of the claims, the objections are withdrawn.

***Claim Rejections - 35 USC § 112***

7. **(Prior Rejection-Withdrawn)** Claim 70 was rejected under 35 U.S.C. 112, second paragraph, as being indefinite because it is not clear what constitutes a conservative variation, the claim is rejected as indefinite. In view of the cancellation of the claim, the rejection is withdrawn.

**(Prior Rejection-Withdrawn)** Claims 70 and 77 were rejected under 35 U.S.C. 112, second paragraph, as being indefinite because it was unclear what was included by the phrase “wherein a portion from at least one of SEQ ID NOS: 38-42 is excluded.” In view of the cancellation of the claims, the rejection is withdrawn.

8. **(Prior Rejection-Withdrawn)** Claim 78 was rejected under 35 U.S.C. 112, second paragraph, as being indefinite because it was unclear what was included by the phrase “wherein the peptide excludes SEQ ID NOS: 38-42.” In view of the cancellation of the claim, the rejection is withdrawn.

9. **(Prior Rejection-Withdrawn)** Claim 70 was rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement because the application did not provide adequate support for the genus comprising any peptide found in a hepatitis A virus protein, wherein the peptide comprises a sequence identical to one of the indicated sequences, or a sequence varying from these sequences by at least one conservative substitution. In view of the cancellation of the claims, the rejection is withdrawn.

***Claim Rejections - 35 USC § 102***

10. **(Prior Rejection-Withdrawn)** Claims 70, 77, and 78 were rejected under 35 U.S.C. 102(b) as being anticipated by either of Dina et al. (EP 0199480- of record in the IDS of October 1998), or Linemeyer et al., J Virol 54(2): 247-55. In view of the cancellation of the claims, the rejection is withdrawn.

***Claim Rejections - 35 USC § 103***

11. **(Prior Rejection-Withdrawn)** Claims 70, 77, and 78 were rejected under 35 U.S.C. 102(b) as anticipated by), or Linemeyer et al. (J Virol 54(2): 247-55) or, in the alternative, under 35 U.S.C. 103(a) as obvious over Linemeyer in view of Dina as described above. In view of the cancellation of the claims, the rejection is withdrawn.

***Conclusion***

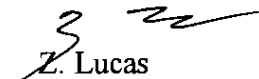
12. Claims 74, 75, and 83-89 are allowed.

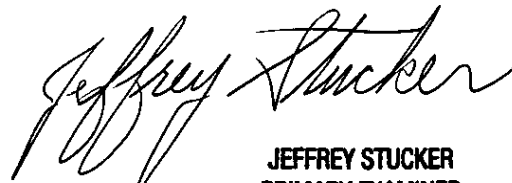
13. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Zachariah Lucas whose telephone number is 571-272-0905. The examiner can normally be reached on Monday-Friday, 8 am to 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Housel can be reached on 571-272-0902. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Z. Lucas  
Patent Examiner

  
JEFFREY STUCKER  
PRIMARY EXAMINER